



LOUISIANA PUBLIC DEFENDER BOARD MEMO

To: The Board
From: Jean M. Faria
Re: Report of the State Public Defender
Date: December 10, 2010

BUDGET

The Budget Division prepared the Fiscal Year 2011-2012 budget totaling \$40,000,000 which was submitted to the Division of Administration on November 1, 2010. Included in the budget request were the two positions approved by the Board, a Development Director and an Auditor. The division also completed the Louisiana Performance Accountability System (LaPas) report which assesses the goals reached by the LPDB for the first quarter of the 2011 fiscal year. The report which was submitted to the Division of Administration indicates that the agency met 100% of the goals. These goals will be refined and updated after the new data management system is in place. The Office of Planning and Budget (OPB) has agreed that this time period is needed to make sure that the new data system can support the documentation needed for the new goals.

The Budget Division conducted financial reviews in the 3rd, 6th and 41st districts on site. The 3rd and 6th districts reviews were a part of a full site review. Budget Officer Laurie Durnin and staff accountant, Natasha Carter, conducted a financial review at the Orleans Public Defenders Office.

All of the districts reviewed were in substantial compliance with the financial requirements. One item noted was that most of the local entities remitting to the public defenders do not identify amounts in the various revenue categories and submit no supporting documentation to the district offices. Laurie Durnin reviewed financial data in-house of the remaining districts which have additional funding requests or are in imminent danger of inadequate funding.

CAPITAL

John Craft, the Capital Case Coordinator, has visited with the heads of offices and units handling capital cases in the districts handling the bulk of capital cases. Mr. Craft has been especially concerned with identifying and regularizing the different processes by which these agencies are matched with clients. These meetings have enhanced communications between the staff and the agencies providing direct representation.

Mr. Craft has also participated in the training process, making the ethics presentation at the capital training session presented by LPDB in Lafayette in October. He made a similar presentation at an in-house CLE session for the Orleans Public Defender office and taught a session on recidivism at the LACDL Last-Chance program in New Orleans.

The Capital Division has been working since the last Board meeting on the process of re-certifying all attorneys who are appointed to represent indigent defendants in capital cases. With the adoption of the new Capital Guidelines, more rigor is applied to the process of certifying counsel. Every attorney certified on May 20, 2010, the effective date of the new guidelines, is currently provisionally certified pending the new application process.

After publishing the application form for the new certification process, the Capital Division found that a great many of the attorneys handling capital cases on contract with local defenders were not yet aware of the new process. We expanded the scope of our outreach by enlisting the aid of district defenders in identifying affected attorneys and informing them of the process. We revised the timetable for submitting applications in order to accommodate those attorneys who were not initially identified. Identifying currently certified attorneys was complicated by the lack of a master list, collating rosters of applicable capital-related continuing legal education programs with attorneys handling capital cases. Thanks to the efforts of Karen Plaisance, LPDB now has such a master list for the first time in years.

Because all applications for certification are now due on January 31, 2011, it is expected that there will be numerous inquiries about the application form which is quite thorough. As applications are received, they will be reviewed and verified, a process which promises to be time-consuming.

COMPLIANCE

Trial Compliance Officer John Di Giulio continued to monitor developments in Calcasieu Parish having visited the District office numerous times since August, 2010. He participated in an inter-agency meeting of criminal justice system officials in Calcasieu Parish and attended the November 19, 2010 meeting of the Southwest Louisiana Bar Association at which Secretary Jimmy LeBlanc was a guest speaker. He accompanied Mr. Neuner and Training Director Julie Kilborn to the December 9, 2010 Bureau of Justice Assistance site visit meeting in Lake Charles.

Mr. Di Giulio has also made numerous trips to Orleans Parish to observe court proceedings and meet with various officials and judges to discuss issues regarding attorneys' access to incarcerated clients and local revenue from court assessed fees.

Since October 1, 2010, Mr. Di Giulio has conducted site visits in the 3rd, 6th, 12th, and 22nd judicial districts. He participated in the staff interviews of the three finalists for the position of District Defender in the 14th judicial district and four finalists in the 15th judicial district and monitored the District Defender Selection Committees in the 20th and 38th judicial districts. He participated in the September 29 and November 17, 2010, LPDB Budget Committee meetings.

On my behalf, he has attended several Sentencing Commission and Sentencing Commission Committee meetings and a meeting of the Louisiana Interchurch Conference Commission on Criminal Justice. In November, Mr. Di Giulio accompanied LPDB Chairman Frank Neuner to a meeting with Senate President Joel T. Chaisson to discuss funding for indigent defense.

ITM

Technology

The ITM team developed the Invitation to Bid (ITB) for the new Case Management System (CMS) which was published on the State Purchasing website in October. All five bids submitted were rejected by the state due to lack of compliance to state bidding regulations or for failure to meet technical specifications. The original ITB was refined and bids will be opened and evaluated for technical specification compliance on December 15, 2010. The team also procured extensions of the current case tracking system contract providing sufficient time for deployment and fine-tuning of and training on the new system. In late October, several members of the ITM division attended a national invitational summit on Case Management System Development with NLADA in Washington, DC.

The ITM division developed an online registration database for trainings and linked it to the LPDB-website training calendar; built another web-based database for tracking the payment of court fee assessments and sentencing in real-time; conducted a COOP Back-Up Email Emergency Drill in November (all 42 district defenders were able to activate and use their district's emergency GMAIL account (pdodistrictX@gmail.com)); and, assumed responsibility for issuing the e-newsletter.

The division is in the process of identifying and training people to use the newly created fee-tracking database in Orleans Parish Municipal and Traffic Courts.

Information

The ITM team completed the disbursement calculations for the FY11 DAF formula, applied the DAF Adjustment Formula to protect failing districts from insolvency, and developed and applied a contingency formula to withhold DAF monies from districts which need no state support, thereby creating \$1.4 in emergency funds. The ITM team also developed formulae regarding the disbursement of the \$979,680 CINC-Indigent Parent Fund monies and applied the formula to those funds. In addition, the office produced updated failure rate projections for FY11-FY15 based on district average expenditures and local revenue receipts for the most current 12-month period (November 2009-October 2010). In doing so, the severe shortages among local revenues in many districts became visible and prompted further statewide analyses regarding the correlation between the amount of court fees actually received and the amount of court fees that would be expected if the fees were being assessed consistently, according to law.

ITM Division Director Erik Stilling accompanied Compliance Officer John Di Giulio and me to Orleans Parish to inquire about the fee assessments in that parish. Dr. Stilling and Mr. Di Giulio also visited the 22nd judicial district courts.

In early November, the ITM Division disseminated the Annual Report Survey Questionnaires to the Districts along with graphics-supported online instructions.

JUVENILE

Juvenile staff attended the National Juvenile Defender Leadership Summit in Washington, D.C. on October 14 – 15, hosted the National Juvenile Defender Center Juvenile Indigent Defense Assistance Network SIG Meeting in New Orleans on November 15 – 16, attended the

MacArthur Conference in North Carolina on November 29 – 30, and attended the MacArthur Conference in Washington, D.C. on December 5 – 7, 2010. Staff also participated in the following meetings and conference calls: Children’s Code Committee, Center for Excellence Committee, Expungement Subcommittee, Juvenile Justice Implementation Commission, Detention Standards Task Force, and CINC Task Force. The State Deputy Public Defender/Director of Juvenile Services, Clay Walker, gave a presentation at the Together We Can Conference, in New Orleans, on October 7, where he was honored with the Catherine Lafleur Legal Advocacy for Children Award for 2010.

Juvenile staff finalized the *Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings* for final consideration by the Board. Staff extensively surveyed available delinquency standards and guidelines from other states, the ABA, NLADA, and NJDC for potential inclusion in the LPDB standards.

Staff scheduled trainers, developed curriculum, and created handouts for the Juvenile Defender Training scheduled for January 2011. Staff met with representatives from the District Attorney’s Association to cooperatively develop a multiple needs adjudication statute for possible consideration by the Children’s Code Committee and subsequent recommendation to the Louisiana Law Institute. Staff assisted in the drafting of detention center standards.

Staff continues to work cooperatively with the Juvenile Justice Project of Louisiana to obtain appellate court records for juveniles affected by the *Graham v. Florida* decision, to be used to advocate for modified dispositions/sentences for these juveniles. The Juvenile Division participated in a site visit to the 22nd Judicial District on November 30, 2010. Staff assisted with collateral consequences research, submitted a report to JIDAN regarding grant work done through the office, reviewed expungement articles for the Children’s Code subcommittee, and provided research on the Missouri Model to the Children’s Code Committee. Finally, division staff wrote articles for the LPDB newsletter.

TRAINING

In October 2010, the Training Division provided a Capital Certification Seminar, co-sponsored by the Louisiana Association of Criminal Defense Lawyers and the Louisiana Public Defenders Association. One hundred thirty defenders attended the seminar, which covered a range of topics relevant to capital defense from victim outreach and investigation to mental health and mitigation issues. In November 2010, the Daubert Workshop was held in Pineville. Seventy-seven defenders participated in the workshop that provided detailed information about various forensic science disciplines, including ballistics, eyewitness identification, DNA, and fingerprint analysis, as well as instruction and assistance on the legal aspects of admitting and attacking scientific evidence.

In December 2010 and January 2011, the Training Division is hosting a three hour presentation, provided by immigration law experts, on the immigration consequences of a conviction to non-citizens. The training is designed to introduce defenders to the basics of immigration proceedings, offer practical strategies for helping non-citizen clients and their families to navigate criminal and immigration custody, and enable defenders to assess the immigration consequences of potential case outcomes in order to fulfill the United States Supreme Court’s mandate in Padilla v. Kentucky.

A dual-track skills training has been scheduled for January 2011. The Voir Dire Academy, an interactive training designed to teach public defenders skills and techniques in conducting non-capital jury selection, is scheduled for January 7 and 8, 2011. Participants will work with trainers experienced in the “Colorado method” of voir dire. The Juvenile Defender Training, also an interactive training designed to assist juvenile defenders in handling delinquency and FINS cases, is scheduled for January 6-8, 2011. Faculty for the Juvenile Defender Training includes experienced Louisiana juvenile defenders as well as preeminent national juvenile trainers.

The Training Division is also preparing a working, interactive one-day program focusing on the LPDB Trial Court Performance Standards promulgated April 2009 and addressing the various ways that the Standards support public defenders in best serving clients and providing effective representation. This training will be provided in four locations in the state: Baton Rouge (January 13, 2011), Lafayette (January 14, 2011), Shreveport (February 3, 2011), and Monroe (February 4, 2011).

Additional upcoming trainings being developed by the Training Division include: *Ensuring Access to Justice for the Intellectually Disabled* (Feb. 9, 2011); *Defender Leadership Training* (Feb. 25, 2011); *Mental Health Advocacy* (Feb. 28, 2011 and May 19, 2011); *Capital Defender Training* (Mar. 24-26, 2011); *Defender Training Institute Introductory Workshop* (Apr. 7-9, 2011); *Juvenile Defender Trainings* (Apr. 15, 2011; July 8, 2011; Nov. 18, 2011); *Investigators Workshop* (July 18-20, 2011); *DTI Annual Conference* (Aug. 11-12, 2011); *Defender Training Institute* (Sept. 11-16, 2011); *Advanced Capital Training* (Oct. 25-29, 2011).

SPECIAL PROJECTS

Special Projects Advisor, Heather Hall, has continued to work on many regular LPDB projects since the last Board meeting. She continues to write content for the bi-monthly e-newsletter, moderate the juvenile and investigator listservs, coordinate the Assistant Defender Advisory Council, assist in implementation of the strategic plan, coordinate press/media strategies with me, support training curriculum with the Director of Training, participate in the working group for language access standards (both in Louisiana, and with the ABA), and maintain the LPDB website.

Over the last couple of months, the LPDB site has averaged about 2,000 unique visitors to the website per month. Most unique visitors come about twice a month, looking at about 15,000 pages (an average of 520 pages viewed per day). One of the most significant additional resources that LPDB has recently posted is a summary of 2010 Legislative Acts that affect the criminal justice system. In addition to this requested resource, we have also circulated press releases, uploaded the new Capital Program Application for Certification and added a resource for public defenders representing clients who are U.S. Veterans (which was an outgrowth of LPDB participation on the Louisiana Sentencing Commission) on our website. Ms. Hall is looking forward to helping develop a Veterans Specialty Court in the coming year. With recent approval of the FY 11 contract with Baby Mogul, LPDB is looking to improve the online resources available to practitioners.

Ms. Hall has also been working on several new projects, including a Community Defender Toolkit, in coordination with other LPDB staff. This resource is intended to assist offices as they seek the resources and programs to transition from public defender to community defender offices. It is particularly focused on the successful integration of social work staff into defense

practice of Louisiana public defender offices. LPDB is working with a number of national partners on this toolkit and I serve as an active member of the newly created ABA Holistic Project Advisory Board. Ms. Hall is also continuing to work on the Collateral Consequences Practice Guide for defenders (the client guides were posted in September 2010) and a Mental Health Handbook for defenders representing clients with mental illness (this handbook is a collaboration with Louisiana Appleseed and the Louisiana Justice Coalition, and will be used in two LPDB mental health trainings in the Spring).

Ms. Hall and I have made progress on the proposed partnership between the state agency and the Louisiana Justice Coalition, a 501(c)3 non-profit organization that has, since its founding in 2004, promoted the ABA *Ten Principles of a Public Defense Delivery System* and the ACCD/NJDC *Ten Core Principles of Juvenile Delinquency Representation in Indigent Defense Systems*. LJC submitted a \$75,000 grant application to the Louisiana Bar Foundation on December 1, 2010, for projects that will assist LPDB objectives. LPDB Member Leo Hamilton is working on creating a draft Cooperative Endeavor Agreement between the two agencies and we look forward to presenting the agreement to the Board for consideration at its next meeting. For more information about the LJC organization, visit www.lajusticecoalition.org.

There is no external progress to report on the John R. Justice Loan Repayment Program, though Ms. Hall has been communicating with the outreach personnel at the Louisiana Office of Student Financial Assistance to ensure prompt and accurate dissemination of relevant information, and has been sending periodic updates to District Defenders and a statewide list of interested public defenders. After a lull in leadership, the Community Oriented Defender Network (hosted by the Brennan Center at NYU School of Law) has hired a new director. Thomas Giovanni assumed his new position in December 2010. Ms Hall, as part of the National COD Advisory Group, is working with Mr. Giovanni to develop next year's conference topics, speakers and materials. In the coming weeks, she will be creating some public education and media materials

Finally, Ms. Hall attended and presented at the NLADA Annual Conference in Atlanta, GA on November 10-12, 2010.

Committee Work

Among the many committees on which I serve both in and out of state, only 2 push my limits: The ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and the Louisiana Sentencing Commission. After 6 years on SCLAID, I will finally cycle off after the Annual Conference in August 2011. As I will no longer be a SCLAID member, I will no longer chair its indigent defense advisory group, although I will remain a member of IDAG, the ABA think tank on indigent defense.

No doubt, the Louisiana Sentencing Commission will rescue me from any possibility of boredom. Since our last Board meeting, either John Di Giulio and/or I attended Sentencing committee or Commission meetings on the following days: October 19, 21, 22; November 8, 9, 15 (2 meetings); December 6, 8 (2 meetings) and 13. This does not include the days that the information technology research subcommittee met and which meetings were attended by LPDB ITM staff.

Every two weeks there is 90-minute ABA Language Access Standards teleconference. The Language Access Task Force is dedicated to creating standards for courts to follow when dealing with Limited English Proficiency (LEP) people. On December 6, 2010, LPDB organized a

conference call with Louisiana stakeholders and the task force consultant on the needs of LEP individuals and the criminal justice system.

The ABA Holistic Project Advisory Board is a new initiative to which the Special Projects Advisor referred in her report. We are now working with lawyers from throughout the country who deliver holistic, client centered services in their offices. At least one teleconference every month is scheduled.

As a member of the executive committee of the American Council of Chief Defenders (ACCD) of the National Legal Aid and Defender Association (NLADA), I have worked on pretrial release advocacy, best practices in assigned counsel programs and specialty courts. The National Voice subcommittee has been working on media strategies surrounding the Missouri Public Defender office closures, among other issues.

On Saturday, November 20, 2010, I participated in a Town Hall Meeting organized by Representative Patricia Haynes Smith. Reverend Dan Krutz also participated in this well attended meeting promoting an exchange of information regarding incarceration. Several other members of the House of Representatives also attended.

The Louisiana State Bar Association's Criminal Justice Committee, formerly known as the Right to Counsel Committee, has become actively engaged in the area of public defense and systemic criminal justice projects. Judge Ricky Wicker and I co-chair the LSBA's Annual Criminal Justice Forum, scheduled for March 29, 2011. The focus of this year's forum will be the crisis in indigent defense funding. We are developing the agenda now and I am very interested in hearing from Board members and defenders, regarding your perspective and issues you believe we should be addressing in the forum.

Working in conjunction with the Training Division, New District Defender Training is scheduled for Friday December 17, 2010. District Defenders from the 14th, 15th and 20th Judicial Districts will be in attendance.

The newly elected District Defender Advisory Council will meet on Monday December 20, 2010 with a new list of challenges to discuss.

The opportunities provided by the fiscal crisis are only as limited as our thinking. The Sentencing Commission and the LSBA Criminal Justice Committee are taking advantage of these opportunities, as should we all.